

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA                          )  
                                                          ) CR 05-64  
V.                                                    )

ANDRE JACOBS

**MEMORANDUM ORDER**

In this action, on April 26, 2006, a jury convicted Defendant of violating 18 U.S.C. 111. On October 2, 2006, Defendant was sentenced to a term of imprisonment of 210 months, followed by a term of supervised release. Defendant filed a Motion to Vacate under 28 U.S.C. 2255 in 2009; the Motion was denied in 2011. In 2017, Defendant filed a second Section 2255 Motion, which was stayed and, ultimately, voluntarily dismissed.

Before the Court is Defendant's counseled Petition for Writ of Audita Querela. Audita querela is "an ancient writ used to challenge a judgment that, while justified at the time it was rendered, has been placed in question by subsequently discovered evidence or by a new legal defense." Gore v. United States, No. 90-304, 2009 U.S. Dist. LEXIS 15403, at \*3 (D.N.J. Feb. 20, 2009). "Courts have limited the remedy to only those instances in which there are gaps in the framework of federal postconviction relief for which no other remedy is available." Id. Section 2255 is the proper method to attack a sentence, and a petitioner cannot invoke audita querela relief "where he asserts a claim that falls squarely within the realm of relief provided for by [2255]." Id. at \*10. Procedural barriers raised by the AEDPA are not "gaps" that may be filled by audita querela. Id. at \*13. "It is the inefficiency of the remedy, not the personal inability to

use it, that is determinative." Cradle v. United States, 290 F.3d 536, 538 (3d Cir.2002) (citations omitted).

In this case, Plaintiff's Petition seeks to challenge his career offender enhancement, on grounds that the simple assault and harassment convictions used to enhance his sentence did not meet the definition of "crime of violence," and that the aggravated assault conviction relied on was not final at the time and was later reversed. Such attacks are within the purview of Section 2255, and audita querela relief is inappropriate. Defendant's Petition is denied, without prejudice to Defendant to seek relief via an appropriate vehicle.<sup>1</sup>

AND NOW, this 12th day of March, 2020, IT IS SO ORDERED.

BY THE COURT:



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Donetta W. Ambrose, Senior Judge

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<sup>1</sup> The Court further assumes that Defendant's counsel shall take all appropriate steps regarding admission to practice in this District prior to proceeding.